that the sentence imposed by the learned magistrate of a fine of $300 is manifestly excessive. As regards the order of disqualification, s 3(2) of the Act provides that a person convicted under s 3(1) shall be disqualified from holding or obtaining a driving licence for a period of 12 months unless there are special reasons for the court to order otherwise. I agree with the learned magistrate that there are no special reasons on the facts of this case not to impose an order that the appellant be disqualified from holding or obtaining a driving licence in respect of class 4 vehicles for a period of 12 months.

Order accordingly.

Solicitors: *Raja & Partners.*

Reported by *Ng Sheau Jiuan*

Nai Seng Hiang & Ors v The Trustees of the Presbyterian Church in Singapore Registered & Ors

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 1069 OF 1987
LAI KEW CHAI J
30 AUGUST 1988

Trusts – Declaration of trust for the purpose of 'Christian works evangelistic social or otherwise' – Whether purposes are exclusively charitable – Cy-pres scheme

Words and Phrases – 'Social or otherwise'

By a declaration of trust, the trustees therein named declared in cl (2) that they held a piece of land upon the following trust: 'upon trust to permit or allow the said land and premises to be used for the purpose of Christian works evangelistic social or otherwise at the discretion of the Chinese Presbyterian Church of Malaya amongst and for the benefit of the children of all Hakka speaking Chinese in Singapore and for this purpose to take all such proceedings as may be necessary to recover possession of the said land and premises.'

The plaintiffs, as the present trustees, sought the court's directions on the following questions: (a) if the trust contained in cl (2) is a valid, charitable trust; or (b) if the trust has failed, whether the land and premises are to be applied cy-pres, the donor AC Jap (deceased) having evinced a general charitable intention; or (c) if the trust is void, whether the land and premises are to be held by the plaintiffs on resulting trust for the residuary estate of the donor.

Held, ordering a cy-pres scheme to fulfil the exclusive charitable intention evinced by the trust:

(1) Having regard to all the factual matrix and the provisions of the declaration of trust, the court is of the opinion that the donor had clearly and unequivocably evinced a general charitable intention that Christian works and evangelistic pursuits were the exclusive purposes with the other purposes 'social or otherwise' as mere adjectives describing one aspect of them because these words were not free standing as to import separate objects.

(2) The property be transferred to the first defendants to hold the property upon trust and subject to the provisions of the trust deed.

Legislation referred to
Government Proceedings Act (Cap 121, 1985 Ed) s 9(1)

Clive Heng for the plaintiffs.
Muthu Arusu for the first defendants.
Joyce Huen (Miss) (State Counsel) for the third defendant.

Cur Adv Vult

Lai Kew Chai J: By this originating summons the plaintiffs as the present trustees of the land and premises known as no 110, Race Course Road, Singapore ('the property') seek the court's determination concerning the trust declared in a declaration of trust dated 18 May 1948 of the donor, AC Jap, deceased, and for directions on the following questions:

(i) if the trust contained in cl 2 is a valid, charitable trust; or

(ii) if the trust has failed, whether the land and premises are to be applied cy-pres, the donor AC Jap (deceased) having evinced a general charitable intention; or

(iii) if the trust is void, whether the land and premises are to be held by the plaintiffs on resulting trust for the residuary estate of the donor.

The first defendants are joined as the party to whom the property should be conveyed if the trust in cl 2 is found to be a valid, charitable trust. They are a body corporate registered under s 68(3) of the Trustees Act. They are regulated by a trust deed. The second defendant is a widow and sole residuary beneficiary of the estate of AC Jap, deceased, and she did not appear though she was duly served with the papers as she had indicated that she would leave the matter to this court. The Attorney General has been joined by virtue of s 9(1) of the Government Proceedings Act (Cap 121, 1985 Ed) and has consented to being so joined.

The material facts were all not in dispute. By a declaration of trust dated 18 May 1948 the trustees there named declared that the property was vested in them, that the purchase price therefor of $20,000 was provided by the said AC Jap and that they held the same upon the following trusts that is to say:

(1) Upon trust to name the said land and premises as 'AC Jap Hall' and to place a memorial brass plate inside the building bearing the following inscription – 'The purchase money for this building was donated by Dr AC Jap in loving memory of his beloved wife Tan Guat Tiong and his beloved daughter Jap Kim Lian.'

(2) Upon trust to permit or allow the said land and premises to be used for the purpose of Christian works evangelistic social or otherwise at the discretion of the Chinese Presbyterian Church of Malaya amongst and for the benefit of the children of all Hakka speaking Chinese in Singapore and for this purpose to take all such proceedings as may be necessary to recover possession of the said land and premises.

Now, for a charitable trust to be valid, it is an undoubted rule that the purposes of the trust must be exclusively charitable. The words 'social or otherwise' in cl 2 of the declaration of trust raises the question if the purposes are exclusively charitable. Further, the condition that the property is to be used 'amongst children of all Hakka speaking Chinese in Singapore' may be said to be impracticable and may lack the public element as the class of beneficiaries is too small.

Having regard to all the factual matrix and the provisions of the declaration of trust, I am of the opinion that the donor had clearly and unequivocably evinced a general charitable intention, that Christian works and evangelistic pursuits were the exclusive purposes with the other purposes 'social or otherwise' as mere adjectives describing Christian works or one aspect of them because these words were not free standing as to import separate objects.

Accordingly, I exercise my discretion and order a cy-pres scheme to fulfil the exclusive charitable intent of the donor and I direct that the property be transferred to the first defendants to hold the property upon trust and subject to the provisions of the trust deed of 6 March 1981.

Order accordingly.

Solicitors: *Murphy & Dunbar*; *Drew & Napier.*

Reported by *Ng Sheau Jiuan*

The Comptroller of Income Tax v Goodearth Realty Pte Ltd

HIGH COURT (SINGAPORE) – SUIT NO 2183 OF 1987
CHAO HICK TIN JC
6 AUGUST 1988

Revenue Law – Taxation arrears and penalties – Claim for – Liberty to enter judgment given – Whether defence was frivolous and vexatious – Payment of tax to be made despite objections to basis of assessment – Comptroller had not issued notice of refusal to defendant's objections – Whether this affected defendant's liability to pay as assessed – Income Tax Act (Cap 134, 1985 Ed), ss 76(4), 86 & 90(3)

The plaintiff sued the defendant for taxes assessed for the year 1982 and penalties due and payable by the defendant under ss 86 and 88 of the Income Tax Act (Cap 134, 1985 Ed) ('the Act'). The assistant registrar granted liberty to the plaintiff to enter judgment against the defendant. The defendant appealed against the order of the assistant registrar on the grounds that: (a) the basis upon which the assessment was raised was clearly erroneous; (b) it had lodged an objection against the plaintiff's assessment and the plaintiff had yet to give his notice of refusal under s 76(4) of the Act; and (c) the certificate of the Comptroller of Income Tax issued under s 90(3) was not properly before the court.

Held, dismissing the appeal:

(1)The defence filed was clearly without merit in so far as it sought to avoid having to pay the tax assessed and penalty. It was an attempt to delay payment. The scheme of things under the Act was clear. A taxpayer must pay the assessed tax first even though he had objected to the assessment and had invoked the procedures of the Act to have the assessment revised.

(2) The fact that the plaintiff had yet to give to the defendant a notice of refusal under s 76(4)(b) of the Act did not in any way affect the defendant's liability to pay as assessed.

(3) The certificate of the Comptroller of Income Tax was filed in court, after having been duly stamped. There was production before the court of the certificate upon which judgment could be entered against the defendant.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 76/88. The appeal is still pending.]

Cases referred to:

1 *Comptroller of Income Tax* v *A Co Ltd* [1966] 2 MLJ 282 (folld)
2 *Comptroller of Income Tax* v *Beaver Singapore Pte Ltd* [1983] 2 MLJ 308 (folld)
3 *Lee Beng Kong* v *Comptroller of Income Tax* [1962] MLJ 346 (distd)
4 *X* v *Comptroller of Income Tax* [1957] MLJ 110 (distd)
5 *Lim Foo Yong Sdn Bhd* v *Comptroller-General of Inland Revenue* [1986] 2 MLJ 161 (distd)
6 *Re Norper Investments Pty Ltd* 15 ALR 603 (distd)

Legislation referred to

Income Tax Act (Cap 134, 1985 Ed) ss 76(4), 86, 88, 90(1), (3)
Rules of the Supreme Court 1970 O 14, O 18 r 19

M Capel for the plaintiff.
S Gunaseelan for the defendant.

Cur Adv Vult

Chao Hick Tin JC: This was an appeal by the defendant against the decision of the assistant registrar striking out the defence filed herein and granting liberty to the plaintiff to enter judgment.

In this action, the plaintiff, the Comptroller of Income Tax, sued the defendant, Goodearth Realty Pte Ltd, for a sum of $212,173.92 being taxes assessed for the year 1982 and penalty due and payable by the defendant under ss 86 and 88 of the Income Tax Act (Cap 134, 1985 Ed) ('the Act').

In the defence filed herein on 2 October 1987, the defendant denied that the tax and penalty claim were